

ID: CCA\_2009030611083719

Number: **200914040**

Release Date: 4/3/2009

Office:

UILC: 6402.04-01, 6511.00-00

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**From:**

**Sent:** Friday, March 06, 2009 11:08:48 AM

**To:**

**Cc:**

**Subject:** Your request for assistance

In consultation with the Counsel Collection experts, below is the analysis your requested to insert in your letter to the Congressman. If you need further assistance let me know.

A taxpayer is not entitled to a refund or a credit of the overpayment after the RSED. The plain language of section 6402 provides:

In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c), (d), (e), and (f), refund any balance to such person. I.R.C. § 6402(a). [\[1\]](#) See also Treas. Reg. § 301.6402-1.

A recent Tax Court case, Crum v. Commissioner, T.C. Memo. 2008-216 (2008) is similar to the present case. In Crum, the Service processed Substitute for Returns for 1989, 1991, and 1992. Payments, both voluntary and involuntary, were applied to satisfy the liabilities. Years later, the taxpayers filed returns for those years claiming overpayments. In the context of an offer-in-compromise made during a CDP hearing in connection with later years, the taxpayers asserted that the overpayments were available to partially satisfy the liabilities for the CDP years. The Tax Court held that because the RSED had expired, the taxpayers' claimed overpayments were not available for refund or for offset against liabilities for the CDP years.

In keeping with the statutory requirements of sections 6402 and 6511, numerous IRM provisions state that time-barred overpayments must be forwarded to excess collections, which is what the Service did in this case. See, e.g., IRM 4.13.3.13, IRM 4.13.3.15, IRM 4.19.4.3.13, IRM 5.18.1.10.2.3.15.1, IRM 8.20.7.7, and IRM 25.15.15.8.

Voluntary and involuntary payments are not treated differently because the applicable Code sections do not distinguish between voluntary and involuntary payments. There are certain circumstances under which it matters whether payments are voluntary or involuntary, such as designation of payments; but sections 6401 and 6402 do not differentiate between the two. For example, Crum, cited above, involved overpayments that resulted from both voluntary and involuntary payments. In addition we note that that the present case involves levy proceeds does not implicate section 6343(d) which provides for the return of levied property to the taxpayer under certain circumstances. That provision is not applicable here. Under section 6343, the Service is authorized to return levy proceeds under certain circumstances: the levy was premature or otherwise not in accordance with the Service's administrative procedures; after the levy, the taxpayer entered into an installment agreement to satisfy the liability for which the levy was made; the return of proceeds will facilitate the collection of the tax liability for which the levy was made; and the return of the proceeds would be in the best interests of the taxpayer and the best interests of the United States. None of those circumstances are present here. Moreover, money levied upon can only be returned before the expiration of nine months from the date of the

levy. I.R.C. § 6343(d); Treas. Reg. § 301.6343-3. While this case does involve levy proceeds, it is not a return of property case under section 6343; rather it is a refund/credit case under section 6402.

[\[1\]](#) The applicable period of limitations is set forth in section 6511 of the Code.